



Legal Status of Bukaemas Transactions and Golden Gardening

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ABSTRACT

Gold is a precious metal that has a stable value and its selling value remains high in the gold market. Gold gardening is one of the gold investment trends that have lucrative advantages, so it arises how the legal status of investing in gold gardening and buying and selling gold in cash. This research method uses a research library that retrieves information from books, yellow books, and some supporting articles. Data analysis is done by collecting possible propositions and non-permissible propositions. The results showed that in buying and selling gold in cash is allowed because gold has become an item in general, not a currency like in ancient times. While in gold gardening is not allowed on the grounds of violating the provisions of Shari'ah namely maysir and gharar. So that in doing gold gardening can cause mudharat for yourself and also others.

Keywords: Law of Buying and Selling Gold; Law of Gardening Gold.

INTRODUCTION

In Indonesia, gold is one of the promising investments. Gold is a precious metal that has a stable value and its selling value remains high in the gold market. With the advantages of gold, many enthusiasts to start investing in gold ranging from a little capital to large capital.

In the opinion of the scholars (*ijma'*) there are some opinions that allow the sale and sale of gold and there are some opinions that do not allow the sale and purchase of gold as stipulated in the Fatwa of the National Shari'ah Council on the sale and purchase of emas in cash. After the formation of the fatwa now arises a new problem in buying and selling gold, namely gold gardening. Gold gardening is one of the gold investment trends that are now being rolled out by the community. Lucrative profits make people do not want to miss out on investing in this gold. This gold investment has still not been established legal status by Indonesian scholars so it is still a question mark (Sa'adah, 2019).

According to the term *syara'* lien is the surrender of property as collateral for debt, whose ownership rights can be taken over when it is difficult to redeem it. As for doing this *rahn* must meet the pillars and conditions of the *rahn* agreement, the following pillars and conditions (Az-Zuhaili, 2012). Rukun pawn there are 4 (four) types; the perpetrator of the pawn account, the lien, the mortgaged goods, and the loan in the pawn account. As for the terms of the lien as follows: The Requirements of the Perpetrators of the Lien Agreement (Elinda & Ashlihah, 2021). Terms of Shighat Lien, Terms of Goods That Are Tarnished, Loan Terms In Pawn Agreement.

BukaEmas is one of the functions used to transact gold in Bukalapak. BukaEmas feature in Bukalapak was launched on July 19, 2017. To be able to transact through the BukaEmas function, you must be an Bukalapak user first. Bukalapak users can buy, sell, and withdraw physical gold through BukaEmas. Bukalapak users can buy gold starting from 0.0001g at a price of Rp. 91 Compared to gold purchases in general, this nominal price is considered very affordable. If the user's gold coin balance reaches 0.5 grams, the user can withdraw the balance of the gold coin. Users can also resell gold purchased at BukaEmas at any time. All transactions such as purchases, sales, and withdrawals of BukaEmas can be made using the Dana application or instant payment (such as BCA KlikPay).

Gold gardening investment is one of the new trends in investing in gold that is rife among the community. This investment has a method that is arguably a little complicated and takes up energy. The

first thing to do in this investment is to buy gold bars and mortgage them in Islamic banks. This method is seen to use many transactions because this method continues to repeat until the money that investors have is little. The first study is from a thesis entitled Aspects of Shari'ah in Buying and Selling Gold Antam Through Online Application At PT. Tamasia GlobalSharia.(Maulidia, 1967) The difference in research is more specifically for #BeliBerkala products in Tamasia, while researchers reviewed the propositions that allow and do not allow the sale and purchase of emas from the opinions of contemporary scholars.

The second study is from a thesis entitled Review of Islamic Law on The Sale and Purchase of Gold Online Through BukaEmas Media in Bukalapak (Fadhli & Fahimah, 2021). The difference is that the study uses global propositions, while research conducted by researchers is more looking for some propositions as supporters of one of the opinions that allow the sale and sale of gold in cash.

The third study is a thesis entitled Investment in Gold Gardening in an Islamic Economic Perspective (Study on PT. Bank Rakyat Indonesia Shari'ah). (Rosnia, 2010) That research focuses on the application of gold garden investment in BRI Syariah, calculation of increasing margins for investors in investing in gold plantations in islamic economic effectiveness. This research allows gold gardening but this golden gardening has a lot of *mudharat* (something detrimental).

The fourth study is a journal entitled Implementation of Gold Pawns in Islamic Banking (Study on BNI Syariah City of Semarang). (Nawawi Fajar Ikhwan, 2017) Merupted research that focuses on pawns in BNI Syariah. In this study considers that Gold Gardening should not be because in gardening gold deviates from the terms and pillars of pawned gold must be its own while in gold gardening uses gold the proceeds of receivable debt.

METHOD

The types of data used in this study are primary data and secondary data, primary data sources obtained from books and yellow books with experts. While the secondary data in this study is data obtained from previous research and other sources related to research in this case related to buying and selling gold and gardening gold. The analysis of data in this study starts from a review of all data collected from previous research journals and direct practice in bukalapak applications. It was later developed into exposure to analysis in journal articles with systematic and communicative language.

RESULT AND DISCUSSION

Contemporary scholars are people who understand science using methodology adapted to the present era. They are oriented towards new thinking as a renewal to make a handle. (Mutrofin, 2013). In Indonesia has a National Sharia Council which is oriented to new thinking as a renewal, resolving a legal problem that is not mentioned in the Qur'an and Hadith or written, so that it can be a handle.

Tirmidhi, Nasa'i, Abu Daud, Ibn Majah, and Ahmad, from Ubadah bin Samit Jual bought gold with gold, silver with silver, wheat with wheat, sha'ir with sha'ir, dates with dates, and salt with salt (with the condition that it should be) the same and similar and in cash. If the type is different, sell it as you want if it is done in cash.

The Prophet's hadith narrates muslim narration from bara' bin 'Azib and Zaid bin Arqam the Prophet (peace be upon him) forbade selling silver with gold in receivable (not cash).

The Hadith of the Prophet narrates the Muslim narration of Abu Sa'id al-Khudri Do not sell gold with gold unless it is the same (value) and do not add some over others; Do not sell silver with silver unless it is equal and do not add some over others; And do not sell the gold and silver that are not cash with the cash.

There are several propositions that allow, among the following. Sheikh Ali Jum'ah said: "It is permissible to buy and sell gold and silver that have been made or prepared to be made in installments at this time where both are no longer treated as mediums of exchange in society and both have become goods (sil'ah). Like other goods sold with cash payments and tough. In both there is no image of dinar and dirham in (exchange) is conditioned cash and handed over as stated in the hadith of abu Sa'id al-Khudri that the Prophet said: "Do not sell gold with gold except in the same size, and do not sell gha'ib gold (not handed over at that time) with cash." (Bukhari).

This hadith contains the 'illat that gold and silver are a medium of exchange and transactions in society. Now that condition is gone, so there is no law because the law revolves along with its 'illat, whether there is or is not. On that basis, then there is no prohibition of syara' to sell buy gold that has been prepared to be made in installments. (Nasional, 2010).

As explained in the Fatwa of the Mui National Shari'ah Council in the opinion of Sheikh Ali Jum'ah, it allows the sale and sale of gold in cash, can be paid on credit or delay payment within the time agreed by the buyer and seller.

Ibn Qudamah in the book of Al-Mugni "Actually buying and selling at a price of no cash is not something that is forbidden, nor is it based on the agreement of scholars. (Az-Zuhaili, 2011). If both the trustee and the seller agree on the price of an item at a price such as 1000 (thousand) if paid in cash and if paid in cash for 1100 (one hundred), then buying and selling is considered valid even in the process of bargaining. Here the seller mentions two prices, namely in cash and not cash. Because in this context is installments (not cash) then the buyer chooses the payment in cash.

As for if the seller has mentioned two prices as mentioned above, but the buyer agrees but does not choose from both options, then the transaction becomes invalid because there is an element of uncertainty. So in buying and selling it must choose one. The hadith of Imam Ahmad and Imam Nasa'i "The Prophet forbade two buying and selling in one contract" the hadith was narrated by imam Ahmad and imam nasai. Imam tirmidhi and ibn hibban narrated the hadith. For the hadith narrated by abi daud "whoever sells in 2 sales then he gets the second or riba". (As-shon'ani, 2006)

In this hadith it is explained that in buying and selling there should not be 2 transactions in 1 contract as we have discussed in the previous point. As long as in the transaction of buying and selling gold there are no 2 transactions in 1 contract, it is allowed. Ushul Fiqih (Al-Qarafi, Anwar al-Buruq fi Anwa' al-Furuq, j. 2, h. 228) "The law based on custom (custom) applies with the custom and is void (does not apply) with it when the custom is void, such as the currency in muamalat"(Nasional, 2010).

The conclusion of the proposition that does not allow is that in buying and selling gold should make transactions in cash can not be done in a non-cash (installment) way because the Prophet Muhammad (peace be upon him) prohibited buying and selling gold in cash. While the conclusion of the proposition that allows is that we can buy and sell gold in cash because gold has become an item is not a medium of exchange anymore, so gold is punished like buying ordinary goods in general, but still has to use the principle of shari'ah that there is no element of *gharar* and riba in the transaction. The conclusion of the whole proposition according to the author is that in buying and selling gold in cash and indirectly allowed, judging from the development of the golden age is now an item such as tables, chairs, laptops, and others.

In essence, the investment method of gold gardening is pawnshop. Pawnshops are used in sharia, sharia pawnshops. It has become a common thing and it has been proven to be halal using sharia pawnshops. In the terms and pillars of pawnshops in Islamic pawnshops and Islamic banks have been fulfilled so that halal uses them. But in this golden gardening the problem is the impact of gold gardening. One of them is in the economic sector.

This gold gardening investment is indeed very profitable for investors, but if it happens in the long term and many do, then there will be damage to market mechanisms. Basically, gold investment can not provide a positive contribution to economic growth because the profits obtained by cinderung are used for personal investment, unlike the case with stock investments where profits can be reused by companies.

Investment of gold gardening when viewed from the provisions of shari'ah (*maysir*, *gharar*, *riba*) is not allowed. If in a transaction deviates from the provisions of Sharia although only one of the three provisions of Shari'ah, then it is considered not permissible. In this gold gardening investment contains 2 elements, *Maysir* and *gharar*.

Gold gardening is said to *be maysir* because in the implementation of this investment does not know whether the price of gold will rise or fall, so there is a gamble that can harm investors. So that investors have to keep paying for gold treatment, they do not know the price of gold will rise in a short period or long time. It is said *gharar* because in this investment contains uncertainty in getting its profits and losses.

CONCLUSION

BukaEmas is used to transact gold in Bukalapak where we must have an Bukalapak account first. minimum purchase of gold of 0.0001 grams at a price of Rp. 91. Furthermore, the Golden Gardening Mechanism does not have a minimum or maximum in investing. Gold gardening does gold pawnshops repeatedly depending on the capital we have.

In the opinion of contemporary scholars about the sale and purchase of gold in BukaEmas that can be done in cash is that some do not allow and some do not allow. Things that do not allow review of hadith and the Qur'an that forbid buying gold in cash. While allowing because *of the ilat* from buying and

selling gold has changed the development of the era where gold after not being a medium of exchange such as money, but becomes ordinary goods such as tables, chairs and others. As for in gold gardening some opinions allow but have *mudharat* that can harm many people so that in doing this golden gardening must be taken into account again.

As for the legal status of gold gardening is permissible if it pays it in cash or not cash in terms of gold that has become an item in general, not a medium of exchange such as currency. While in gold gardening is not allowed for reasons in gold gardening has deviated from the provisions of shari'ah in the form of *maysir* and *gharar* so that there are many *mudharat* compared to the benefits that will be obtained. *Mudharat* obtained from gold gardening is not only detrimental to yourself but many people when viewed from economic problems that can make the value of gold unstable.

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